

AMENDED IN ASSEMBLY APRIL 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1455

**Introduced by Assembly Member Negrete McLeod
(Coauthor: Assembly Member Correa)**

February 21, 2003

An act to amend ~~Section 417.2~~ *Sections 417.2 and 12001* of the Penal Code, relating to imitation firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1455, as amended, Negrete McLeod. Imitation firearms.

Under existing law, any person who, except as specified, sells, manufactures, ships, transports, distributes, or receives an imitation firearm, as defined, is liable for a civil fine of not more than \$10,000 for each violation. Existing law also describes certain devices, among which is an instrument that expels a metallic projectile, as specified, that are not within the definition of "imitation firearm."

This bill would ~~provide that~~ *revise those provisions to exempt instruments that expel a plastic projectile, such as a BB or pellet not exceeding 6mm, as specified, would not be within* from the definition of "imitation firearm."

Existing law provides that it is a misdemeanor to furnish a minor with a BB device. Existing law defines the term "BB device" for those purposes.

This bill would conform the definition of the term "BB device" to the definition used for purposes of the imitation firearms exclusion.

By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 417.2 of the Penal Code is amended to
2 read:
- 3 417.2. (a) Any person who, for commercial purposes,
4 purchases, sells, manufactures, ships, transports, distributes, or
5 receives, by mail order or in any other manner, an imitation firearm
6 except as permitted by this section shall be liable for a civil fine in
7 an action brought by the city attorney of the city or the district
8 attorney of the county of not more than ten thousand dollars
9 (\$10,000) for each violation.
- 10 (b) The manufacture, purchase, sale, shipping, transport,
11 distribution, or receipt, by mail or in any other manner, of imitation
12 firearms is permitted if the device is manufactured, purchased,
13 sold, shipped, transported, distributed, or received for any of the
14 following purposes:
- 15 (1) Solely for export in interstate or foreign commerce.
16 (2) Solely for lawful use in theatrical productions, including
17 motion picture, television, and stage productions.
18 (3) For use in a certified or regulated athletic event or
19 competition.
- 20 (4) For use in military or civil defense activities.
21 (5) For public displays authorized by public or private schools.
- 22 (c) As used in this section, "imitation firearm" means a replica
23 of a firearm that is so substantially similar in physical properties
24 to an existing firearm as to lead a reasonable person to conclude
25 that the replica is a firearm.
- 26 (d) As used in this section, "imitation firearm" does not
27 include any of the following:
- 28 (1) A nonfiring collector's replica of an antique firearm that
29 was designed prior to 1898, is historically significant, and is

1 offered for sale in conjunction with a wall plaque or presentation
2 case.

3 (2) A nonfiring collector's replica of a firearm that was
4 designed after 1898, is historically significant, was issued as a
5 commemorative by a nonprofit organization, and is offered for
6 sale in conjunction with a wall plaque or presentation case.

7 (3) A device, as defined in subdivision (g) of Section 12001.

8 (4) An imitation firearm where the coloration of the entire
9 exterior surface of the device is bright orange or bright green,
10 either singly or in combination.

11 (5) An instrument that expels a ~~metallic~~ projectile, such as a BB
12 or pellet, ~~or a plastic projectile~~ not exceeding 6mm caliber, ~~such~~
13 ~~as a BB or pellet~~, through the force of air pressure, gas pressure,
14 or spring action, or a spot marker gun.

15 *SEC. 2. Section 12001 of the Penal Code is amended to read:*

16 12001. (a) (1) As used in this title, the terms "pistol,"
17 "revolver," and "firearm capable of being concealed upon the
18 person" shall apply to and include any device designed to be used
19 as a weapon, from which is expelled a projectile by the force of any
20 explosion, or other form of combustion, and that has a barrel less
21 than 16 inches in length. These terms also include any device that
22 has a barrel 16 inches or more in length which is designed to be
23 interchanged with a barrel less than 16 inches in length.

24 (2) As used in this title, the term "handgun" means any
25 "pistol," "revolver," or "firearm capable of being concealed
26 upon the person."

27 (b) As used in this title, "firearm" means any device, designed
28 to be used as a weapon, from which is expelled through a barrel a
29 projectile by the force of any explosion or other form of
30 combustion.

31 (c) As used in Sections 12021, 12021.1, 12070, 12071, 12072,
32 12073, 12078, 12101, and 12801 of this code, and Sections 8100,
33 8101, and 8103 of the Welfare and Institutions Code, the term
34 "firearm" includes the frame or receiver of the weapon.

35 (d) For the purposes of Sections 12025 and 12031, the term
36 "firearm" also shall include any rocket, rocket propelled
37 projectile launcher, or similar device containing any explosive or
38 incendiary material whether or not the device is designed for
39 emergency or distress signaling purposes.

(e) For purposes of Sections 12070, 12071, and paragraph (8) of subdivision (a), and subdivisions (b), (c), (d), and (f) of Section 12072, the term “firearm” does not include an unloaded firearm that is defined as an “antique firearm” in Section 921(a)(16) of Title 18 of the United States Code.

(f) Nothing shall prevent a device defined as a “handgun,” “pistol,” “revolver,” or “firearm capable of being concealed upon the person” from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

(g) For purposes of Sections 12551 and 12552, the term “BB device” means any instrument that expels a ~~metallie~~ projectile, such as a BB or a pellet, *not exceeding 6mm caliber*, through the force of air pressure, ~~CO₂~~ gas pressure, or spring action, or any spot marker gun.

(h) As used in this title, “wholesaler” means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to Section 12071, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

“Wholesaler” shall not include a manufacturer, importer, or gunsmith who is licensed to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code or a person licensed pursuant to Section 12071 and the regulations issued pursuant thereto. A wholesaler also does not include those persons dealing exclusively in grips, stocks, and other parts of firearms that are not frames or receivers thereof.

(i) As used in Section 12071, 12072, or 12084, “application to purchase” means any of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (b) of Section 12076.

(2) The initial completion of the LEFT by the purchaser, transferee, or person being loaned the firearm as required by subdivision (d) of Section 12084.

1 (3) The initial completion and transmission to the department
2 of the record of electronic or telephonic transfer by the dealer on
3 the purchaser, transferee, or person being loaned the firearm as
4 required by subdivision (c) of Section 12076.

5 (j) For purposes of Section 12023, a firearm shall be deemed
6 to be “loaded” whenever both the firearm and the unexpended
7 ammunition capable of being discharged from the firearm are in
8 the immediate possession of the same person.

9 (k) For purposes of Sections 12021, 12021.1, 12025, 12070,
10 12072, 12073, 12078, 12101, and 12801 of this code, and Sections
11 8100, 8101, and 8103 of the Welfare and Institutions Code,
12 notwithstanding the fact that the term “any firearm” may be used
13 in those sections, each firearm or the frame or receiver of the same
14 shall constitute a distinct and separate offense under those
15 sections.

16 (l) For purposes of Section 12020, a violation of that section as
17 to each firearm, weapon, or device enumerated therein shall
18 constitute a distinct and separate offense.

19 (m) Each application that requires any firearms eligibility
20 determination involving the issuance of any license, permit, or
21 certificate pursuant to this title shall include two copies of the
22 applicant’s fingerprints on forms prescribed by the Department of
23 Justice. One copy of the fingerprints may be submitted to the
24 United States Federal Bureau of Investigation.

25 (n) As used in this chapter, a “personal handgun importer”
26 means an individual who meets all of the following criteria:

27 (1) He or she is not a person licensed pursuant to Section 12071.

28 (2) He or she is not a licensed manufacturer of firearms
29 pursuant to Chapter 44 (commencing with Section 921) of Title 18
30 of the United States Code.

31 (3) He or she is not a licensed importer of firearms pursuant to
32 Chapter 44 (commencing with Section 921) of Title 18 of the
33 United States Code and the regulations issued pursuant thereto.

34 (4) He or she is the owner of a pistol, revolver, or other firearm
35 capable of being concealed upon the person.

36 (5) He or she acquired that pistol, revolver, or other firearm
37 capable of being concealed upon the person outside of California.

38 (6) He or she moves into this state on or after January 1, 1998,
39 as a resident of this state.

1 (7) He or she intends to possess that pistol, revolver, or other
2 firearm capable of being concealed upon the person within this
3 state on or after January 1, 1998.

4 (8) The pistol, revolver, or other firearm capable of being
5 concealed upon the person was not delivered to him or her by a
6 person licensed pursuant to Section 12071 who delivered that
7 firearm following the procedures set forth in Section 12071 and
8 subdivision (c) of Section 12072.

9 (9) He or she, while a resident of this state, had not previously
10 reported his or her ownership of that pistol, revolver, or other
11 firearm capable of being concealed upon the person to the
12 Department of Justice in a manner prescribed by the department
13 that included information concerning him or her and a description
14 of the firearm.

15 (10) The pistol, revolver, or other firearm capable of being
16 concealed upon the person is not a firearm that is prohibited by
17 subdivision (a) of Section 12020.

18 (11) The pistol, revolver, or other firearm capable of being
19 concealed upon the person is not an assault weapon, as defined in
20 Section 12276 or 12276.1.

21 (12) The pistol, revolver, or other firearm capable of being
22 concealed upon the person is not a machinegun, as defined in
23 Section 12200.

24 (13) The person is 18 years of age or older.

25 (o) For purposes of paragraph (6) of subdivision (n):

26 (1) Except as provided in paragraph (2), residency shall be
27 determined in the same manner as is the case for establishing
28 residency pursuant to Section 12505 of the Vehicle Code.

29 (2) In the case of members of the Armed Forces of the United
30 States, residency shall be deemed to be established when he or she
31 was discharged from active service in this state.

32 (p) As used in this code, “basic firearms safety certificate”
33 means a certificate issued by the Department of Justice pursuant
34 to Article 8 (commencing with Section 12800) of Chapter 6 of
35 Title 2 of Part 4, prior to January 1, 2003.

36 (q) As used in this code, “handgun safety certificate” means a
37 certificate issued by the Department of Justice pursuant to Article
38 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part
39 4, as that article is operative on or after January 1, 2003.

1 (r) As used in this title, “gunsmith” means any person who is
2 licensed as a dealer pursuant to Chapter 44 (commencing with
3 Section 921) of Title 18 of the United States Code and the
4 regulations issued pursuant thereto, who is engaged primarily in
5 the business of repairing firearms, or making or fitting special
6 barrels, stocks, or trigger mechanisms to firearms, or the agent or
7 employee of that person.

8 *SEC. 3. No reimbursement is required by this act pursuant to*
9 *Section 6 of Article XIII B of the California Constitution because*
10 *the only costs that may be incurred by a local agency or school*
11 *district will be incurred because this act creates a new crime or*
12 *infraction, eliminates a crime or infraction, or changes the penalty*
13 *for a crime or infraction, within the meaning of Section 17556 of*
14 *the Government Code, or changes the definition of a crime within*
15 *the meaning of Section 6 of Article XIII B of the California*
16 *Constitution.*

